

AMENDED IN ASSEMBLY JUNE 20, 2002

AMENDED IN ASSEMBLY JUNE 13, 2002

AMENDED IN SENATE APRIL 18, 2002

SENATE BILL

No. 1519

Introduced by Senator Bowen

February 20, 2002

An act to amend Section 394 of, and to add Section 365.2 to, the Public Utilities Code, relating to electric power.

LEGISLATIVE COUNSEL'S DIGEST

SB 1519, as amended, Bowen. Department of Water Resources: power.

(1) Existing law authorizes the Department of Water Resources to enter into contracts for the purchase of electric power, to sell power to retail end use customers and, with certain exceptions, to local publicly owned electric utilities at not more than the department's acquisition costs. Existing law provides that the department retains title to all power sold by it to the retail end use customers. Existing law directs the Public Utilities Commission to suspend direct transactions between electricity suppliers and end use customers of certain privately owned electrical corporations, until the department no longer supplies electrical power.

This bill would require the Public Utilities Commission, if it determines there is a shifting of recoverable costs, as specified, from customers who take service from an alternate provider to the customers of an electrical corporation, to recover those costs from each customer class in proportion to the load of each class that is served by alternate providers. The bill would declare this requirement to be consistent with

the requirements of specified provisions of existing law, and therefore, declaratory of existing law.

This bill would require the commission to establish a mechanism to allow customers of an electrical corporation for whom direct transactions have been suspended, to elect to purchase renewable power, as defined, from an alternate provider, as defined. The bill would prohibit implementation of the election to purchase renewable power until the commission develops a cost-recovery mechanism, as specified, that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001, and the effective date of this act. The bill would authorize the commission to require an electrical corporation to offer renewable power service to its customers. The bill would require a customer that elects to purchase renewable power from an alternate provider to reimburse the department *and the electrical corporation that previously served the customer* for specified costs *and charges*. ~~The bill would require a customer that purchases power from a community choice aggregator to reimburse the electrical corporation that previously served the customer for specified costs.~~ The bill would authorize ~~the department and the~~ commission to impose a charge, in certain circumstances, upon a customer if the customer returns to receiving electricity from the department or the electrical corporation. This charge would be the obligation of the alternate provider where customers are involuntarily returned to receiving electricity from the department or the electrical corporation. The bill would require each provider, as a condition of registration with the commission as an electric service provider, to post a bond or demonstrate insurance sufficient to cover the charge. The bill would require the commission to require each customer of an electrical corporation to be notified of the conditions for purchasing power from an alternate provider within 90 days of the effective date of these provisions. Because a violation of an order of the commission is a crime under existing provisions of law, the bill would impose a state-mandated local program by expanding the definition of a crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature, in enacting the
2 act adding this section, to establish a policy to govern the
3 circumstances under which retail end use customers may choose
4 to acquire service from energy providers other than the
5 Department of Water Resources. The goal of that policy is to
6 provide retail end use customers the greatest possible flexibility in
7 procuring power while preventing any negative consequences for
8 those customers who continue to be served by the Department of
9 Water Resources. It is further the intent of the Legislature to
10 recognize the genuine contributions of new and renewable sources
11 of electrical generation to affordable, clean, reliable, and
12 sustainable electricity service for all California residents.

13 SEC. 2. Section 365.2 is added to the Public Utilities Code, to
14 read:

15 365.2. (a) As used in this section, the following terms have
16 the following meanings:

17 (1) “Alternate provider” means an entity, other than an
18 electrical corporation, supplying electricity to a retail end use
19 customer within the service territory of an electrical corporation
20 as the territory existed on February 1, 2001.

21 (2) “Department” means the Department of Water Resources.

22 (3) “Electrical corporation” means an electrical corporation,
23 as defined in Section 218, serving the retail end use customers for
24 which the department is procuring power pursuant to Division 27
25 (commencing with Section 80000) of the Water Code.

26 (4) “Renewable power” means electricity produced from
27 geothermal, wind, solar, biomass, or landfill gas sources.

28 (b) (1) It is the intent of the Legislature, that each retail end use
29 customer that has purchased power from an electrical corporation
30 on or after February 1, 2001, regardless of whether the customer
31 thereafter takes service from an alternate provider, bear a pro rata
32 share of the department’s power purchase costs, as well as power
33 purchase contract obligations incurred as of the effective date of
34 this act, that are attributable to the customer and ~~area~~ are
35 recoverable from electrical corporation customers in

1 commission-approved rates. It is the further intent of the
2 Legislature to prevent any shifting of recoverable costs from
3 customers who take service from an alternate provider to electrical
4 corporation customers.

5 (2) To the extent that any shifting of recoverable costs would
6 occur, in the determination of the commission, those costs shall be
7 recovered from each customer class in proportion to the load of
8 each class that is served by alternate providers.

9 (3) The Legislature finds that this subdivision is consistent with
10 the requirements of Chapter 4 of the Statutes of 2001, First
11 Extraordinary Session, and is therefore declaratory of existing
12 law.

13 (c) The commission shall establish a mechanism to allow
14 electrical corporation retail end use customers, upon their election,
15 to purchase renewable power. To accomplish this, the commission
16 may require an electrical corporation to offer renewable power to
17 its retail end use customers. Renewable power service may not be
18 priced in a manner that results in shifting costs onto customers
19 taking service under the standard tariffs of the electrical
20 corporation.

21 (d) (1) Notwithstanding Section 80110 of the Water Code, a
22 retail end use customer purchasing power from an electrical
23 corporation, may elect to purchase renewable power from an
24 alternate provider, upon payment of the costs described in
25 ~~subdivision (e)~~ subdivisions (e) and (f), and pursuant to the terms
26 and conditions as may necessarily be imposed by the commission,
27 consistent with this section.

28 (2) This subdivision shall not become operative until the
29 commission develops a cost-recovery mechanism, consistent with
30 subdivision (b), that is applicable to customers that elected to
31 purchase electricity from an alternate provider between February
32 1, 2001, and the effective date of this act adding this section.

33 (3) Ninety days prior to implementing this subdivision, the
34 commission shall submit a report certifying its satisfaction of
35 paragraph (2) to the Senate Energy, Utilities and Communications
36 Committee, or its successor, and the Assembly Committee on
37 Utilities and Commerce, or its successor.

38 (e) A retail end use customer that elects to purchase electricity
39 from an alternate provider ~~shall reimburse the department for~~
40 *pursuant to this section shall pay* all of the following:

~~(1) The department's unrecovered actual cost of power procurement, including any financing and administrative costs, attributable to that customer, as determined by the commission. The department's actual cost shall be calculated as the difference, if any, between the department's total actual procurement costs attributable to a customer and the revenues collected by the department from the customer during the customer's term of service with the department. The commission shall publish, and update as necessary, a formula for calculation of unrecovered costs that are due pursuant to this subdivision.~~

(1) A charge equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond related costs pursuant to any agreement between the commission and the department pursuant to Section 80110 of the Water Code. The charge shall be payable until all obligations of the department pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged. The revenue from the charge are the property of the department.

(2) Any additional costs of the department, equal to the share of the department's estimated net unavoidable power purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from an alternate provider, through the expiration of all then existing power purchase contracts entered into by the department.

(f) A retail end use customer ~~purchasing power from a community choice aggregator~~ *that elects to purchase electricity from an alternate provider* pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:

(1) The electrical corporation's unrecovered past undercollections, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.

(2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable power purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice

1 aggregator, through the expiration of all then existing power
2 purchase contracts entered into by the electrical corporation.

3 (g) *The revenue from any charge or cost imposed pursuant to*
4 *subdivision (e) is the property of the department. The revenues*
5 *from any charge or cost imposed pursuant to subdivision (f) is the*
6 *property of the electrical corporation, as applicable and as*
7 *determined by the commission. The commission shall establish*
8 *mechanisms, including agreements with, or orders with respect to,*
9 *electrical corporations, necessary to ensure that costs recovered*
10 *pursuant to this section shall be promptly remitted to the party*
11 *entitled to the payment.*

12 (2) *A charge or cost imposed pursuant to this section shall be*
13 *nonbypassable.*

14 (h) If a nonresidential retail end use customer previously
15 served by an alternate provider thereafter purchases electricity
16 from an electrical corporation, the department and the commission
17 may impose a charge equivalent to any unavoidable costs imposed
18 on the electricity portfolio of the department or an electrical
19 corporation, attributable to the load of that customer, if the charge
20 is necessary to avoid imposing costs on other customers of the
21 electrical corporation, or on the state. If a customer is involuntarily
22 returned to electricity service from an electrical corporation by an
23 alternate provider, any such charge shall be the obligation of the
24 alternate provider except in the case of a customer returned due to
25 default in payment or other contractual obligations or because the
26 customer's contract has expired. As a condition of its registration
27 pursuant to Section 394 of the Public Utilities Code, an alternate
28 provider shall post a bond or demonstrate insurance sufficient to
29 cover such a charge.

30 ~~(h)~~

31 (i) Within 90 days of the effective date of the act adding this
32 section, the commission shall require each electrical corporation
33 retail end use customer to be notified of conditions for purchasing
34 power from an alternate provider pursuant to this section.

35 SEC. 3. Section 394 of the Public Utilities Code is amended
36 to read:

37 394. (a) As used in this section, "electric service provider"
38 means an entity that offers electrical service to customers within
39 the service territory of an electrical corporation, but does not
40 include an electrical corporation, as defined in Section 218, or a

1 public agency that offers electrical service to residential and small
2 commercial customers within its jurisdiction, or within the service
3 territory of a local publicly owned electric utility. “Electric service
4 provider” includes the unregulated affiliates and subsidiaries of an
5 electrical corporation, as defined in Section 218.

6 (b) Each electric service provider shall register with the
7 commission. As a precondition to registration, the electric service
8 provider shall provide, under oath, declaration, or affidavit, all of
9 the following information to the commission:

10 (1) Legal name and any other names under which the electric
11 service provider is doing business in California.

12 (2) Current telephone number.

13 (3) Current address.

14 (4) Agent for service of process.

15 (5) State and date of incorporation, if any.

16 (6) Number for a customer contact representative, or other
17 personnel for receiving customer inquiries.

18 (7) Brief description of the nature of the service being
19 provided.

20 (8) Disclosure of any civil, criminal, or regulatory sanctions or
21 penalties imposed within the 10 years immediately prior to
22 registration, against the company or any owner, partner, officer, or
23 director of the company pursuant to any state or federal consumer
24 protection law or regulation, and of any felony convictions of any
25 kind against the company or any owner, partner, officer, or director
26 of the company. In addition, each electric service provider shall
27 furnish the commission with fingerprints for those owners,
28 partners, officers, and managers of the electric service provider
29 specified by any commission decision applicable to all electric
30 service providers. The commission shall submit completed
31 fingerprint cards to the Department of Justice. Those fingerprints
32 shall be available for use by the Department of Justice and the
33 Department of Justice may transmit the fingerprints to the Federal
34 Bureau of Investigation for a national criminal history record
35 check. The commission may use information obtained from a
36 national criminal history record check conducted pursuant to this
37 section to determine an electric service provider’s eligibility for
38 registration.

39 (9) Proof of financial viability. The commission shall develop
40 uniform standards for determining financial viability and shall

1 publish those standards for public comment no later than March
2 31, 1998. In determining the financial viability of the electric
3 service provider, the commission shall take into account the
4 number of customers the potential registrant expects to serve, the
5 number of kilowatthours of electricity it expects to provide, and
6 any other appropriate criteria to ensure that customers have
7 adequate recourse in the event of fraud or nonperformance.

8 (10) Proof of technical and operational ability. The
9 commission shall develop uniform standards for determining
10 technical and operational capacity and shall publish those
11 standards for public comment no later than March 31, 1998.

12 (c) Any registration filing approved by the commission prior to
13 the effective date of this section which does not comply in all
14 respects with the requirements of subdivision (a) of Section 394
15 shall nevertheless continue in force and effect so long as within 90
16 days of the effective date of this section the electric service
17 provider undertakes to supplement its registration filing to the
18 satisfaction of the commission. Any registration that is not
19 supplemented by the required information within the time set forth
20 in this subdivision shall be suspended by the commission and shall
21 not be reinstated until the commission has found the registration
22 to be in full compliance with subdivision (a) of Section 394.

23 (d) Any public agency offering aggregation services as
24 provided for in Section 366 solely to retail electric customers
25 within its jurisdiction that has registered with the commission
26 prior to the enactment of this section may voluntarily withdraw its
27 registration to the extent that it is exempted from registration under
28 this chapter.

29 (e) Before reentering the market, electric service providers
30 whose registration has been revoked shall file a formal application
31 with the commission that satisfies the requirements set forth in
32 Section 394.1 and demonstrates the fitness and ability of the
33 electric service provider to comply with all applicable rules of the
34 commission.

35 (f) Registration with the commission is an exercise of the
36 licensing function of the commission, and does not constitute
37 regulation of the rates or terms and conditions of service offered
38 by electric service providers. Nothing in this part authorizes the
39 commission to regulate the rates or terms and conditions of service
40 offered by electric service providers.

1 SEC. 4. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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